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SIPDIS  
TELEGRAM

April 06, 2004

To: No Action Addressee  
Action: Unknown  
From: AMEMBASSY ABU DHABI (ABU DHABI 1022 - ROUTINE)  
TAGS: ETRD  
Captions: None  
Subject: PRIMER ON UAEG AGENCY/SPONSORSHIP REGULATIONS  
Ref: None

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UNCLAS ABU DHABI 01022

SIPDIS  
Laser1:  
INFO: FCS  
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ACTION: ECON  
INFO: P/M AMB DCM POL

DISSEMINATION: ECON  
CHARGE: PROG

APPROVED: DCM: RALBRIGHT  
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RR RUEHC RUEHZM  
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FM AMEMBASSY ABU DHABI  
TO RUEHC/SECSTATE WASHDC 3850  
INFO RUEHZM/GCC COLLECTIVE

UNCLAS SECTION 01 OF 03 ABU DHABI 001022

SIPDIS

DEPT FOR NEA, NEA/ARP  
DEPT PASS TO USTR - JASON BUNTIN  
GENEVA PASS TO USTR

E.O. 12958: N/A  
TAGS: [ETRD](#) [WTO](#) [USTR](#) [TC](#)  
SUBJECT: PRIMER ON UAEG AGENCY/SPONSORSHIP REGULATIONS

REF: ABU DHABI 1004

11. Summary: The UAE maintains non-tariff barriers to investment in the form of restrictive agency, sponsorship, and distributorship requirements. In order to do business in the UAE outside one of the free zones, a foreign business in most cases must have a UAE national sponsor, agent or distributor. Once chosen, sponsors, agents, or distributors have exclusive rights. The foreign principal can appoint one agent for the entire UAE or for a particular emirate or group of emirates. The federal laws governing agency relationships provide that an agent can be terminated only by mutual agreement of the foreign principal and the local agent. In practice, U.S. companies accustomed to doing

business in the UAE have used the agency/sponsorship laws to their advantage -- often selecting prominent Emiratis with access to senior UAE leaders and other merchant families who can win contracts and enter into lucrative agreements on their behalf. End summary.

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THE AGENCY LAW IN DETAIL  
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¶2. There are three important pieces of legislation regulating agency relationships in the UAE. Federal Law No. 18 of 1981 on the Organization of Commercial Agencies (as amended by Federal Law No. 14 of 1988) is known as the "Agency Law." Although this is a federal law, local lawyers tell us that there are some differences of interpretation between the courts of the different emirates. The UAE Commercial Transactions Law, Federal Law No. 18 of 1993 (the "Commercial Code") also contains several provisions relevant to commercial agencies. The Commercial Code is relatively new and the interpretation and enforcement of its particular provisions by the UAE courts have not yet been tested. Local lawyers say that they expect courts to apply the provisions of the Commercial Code only to the extent that the Agency Law is silent. The Civil Transactions Law, Federal Law No. 5 of 1985 (the "Civil Code") is the final piece of legislation regulating agency relationships in the UAE, and the Civil Code applies in instances where there are gaps in the Commercial Code.

¶3. The Agency Law makes no distinction between commercial agency agreements, and agreements regarding distributorships, franchises, commission arrangements and other forms of sales representative or sales agency relationships. All of these forms of business arrangements qualify as commercial agencies under the Agency Law. Article 1 of the Agency Law defines a commercial agency as "the representation of a principal by an agent for the purpose of distributing, selling, offering or providing merchandise, or services inside the state for a commission or profit." A principal is defined as "the producer or manufacturer or the exclusive accredited exporter or representative of the producer."

¶4. Article 2 of the Agency Law provides that a registered commercial agent must be either a UAE national or a company incorporated in the UAE and owned 100 percent by UAE nationals. No exception is given to nationals of other Gulf Cooperation Council states. Although Article 2 restricts the appointment of registered commercial agents to UAE nationals or wholly owned UAE entities, an agency agreement also can provide for the management of an agency by a foreign principal or the delegation of management to a non-national.

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It's Good To Be King  
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¶5. The Agency Law affords a number of benefits to the UAE national agent. Article 8 of the Agency Law provides that a principal cannot terminate or refuse to renew an agency agreement without "justified cause," even if the agency agreement provides for a fixed term. In practice, U.S. companies say that establishing justified cause for termination before UAE authorities is very difficult, even in cases where the agent failed to perform.

¶6. Under Article 28 of the Agency Law, the Ministry of Economy's (MoE) Commercial Agencies Committee can review any dispute arising in connection with a registered agency. As a general rule, the Committee is protective of agents and usually concludes that a justifiable reason does not/not exist to permit the termination of an agency. In cases when the Committee accepts that sufficient reasons exist to permit the termination of the agency, the MoE frequently orders the payment of compensation to the agent.

¶7. Article 9 of the Agency Law provides that if an agency has terminated improperly or on account of circumstances beyond the control of the agent, the agent may claim damages against the principal foreigner. The refusal of the principal to renew an agency agreement upon its expiration also gives the agent the right to claim compensation. In such cases, the agent simply must prove that the agent's activities led to some success in the distribution of the principal's products or in the promotion of their sales and that the non-renewal of the agreement will cause damage to the agent. To defeat such a claim the principal must prove, as a minimum, that the agent has committed a material breach of the agreement. Accordingly, the Agency Law provides an inherent right for agents to maintain their agencies irrespective of any specific performance criteria that may have been agreed by the parties.

¶8. A replacement agency may not be entered in the Commercial Agents Register maintained at the MoE unless the termination of the former agency has been nullified amicably (or by the courts), under Article 8.

¶9. Article 23 of the Agency Law gives registered commercial agents the exclusive right to import the goods that are the subject of the agency agreement. While a termination dispute remains pending with the Agency Committee and perhaps later during an appeal to the UAE courts, a registered agent can prevent the foreign principal from importing such goods through a replacement agent. This can provide registered agents with a strong tactical advantage in the litigation process.

¶10. According to Article 7, commercial agents can receive commissions on both sales made by the agent as well as any direct sales made by the principal or others -- regardless of whether these direct sales occur as a result of efforts by the agent.

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A Word About Sponsorships  
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¶11. Another aspect of the UAE's agency laws is the concept of a sponsor. Foreign companies in the UAE are permitted to operate here in the form of a limited liability company (the foreign shareholder holds a maximum of 49 percent of the shares, but can receive up to 75 percent of the company's profits) or establish a branch office in the UAE. A branch office is not permitted to carry on commercial activities and cannot physically deal in or trade in goods within the UAE. It is, however, permitted to render maintenance and services to customers of its parent company. A branch office can promote, advertise and market its parent company's goods and services and even enter into contracts for sales, however -- because of the prohibition against physically dealing in goods -- any goods imported into the UAE must be imported in the name of the customers as consignees.

¶12. As a prerequisite to obtaining a business license, the parent company must appoint a UAE national as the service agent of the branch office in the UAE under a written agreement. If the service agent is a company, all of its partners must be UAE nationals. The service agent is commonly referred to as a sponsor. The UAE Commercial Code expressly limits the sponsor's obligations toward the company to rendering services without assuming any financial responsibility or liability relating to the business. The sponsor basically obtains licenses, visas and permits necessary for the running of the business of the branch office. In consideration of his services, the sponsor is paid a fixed annual sum and is not entitled to a share in any of the profits or other compensation.

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The Benefits Of Selecting The "Right" Local Partner  
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¶13. There are some important legal advantages to principals that select an appropriate local partner. Although all IPR rights holders receive protection in the UAE under recently-enacted federal legislation, a primary benefit of hiring an agent registered under the Agency Law is the increased ability to protect against the infringement of the principal's trademark rights and to restrict parallel imports. Under Article 23 of the Agency Law, no one is allowed to import into the UAE any commodities, products, manufactured goods, materials, or other merchandise that is in the name of a registered commercial agent without the prior consent of the agent. Indeed, U.S. companies seeking damages for IPR infringement here generally receive a positive and expeditious judgment from the courts when the local agent initiates litigation. The UAE customs authorities, likewise, are not permitted to clear imports through parties other than the registered agent without the prior approval of the MoE or the agent. In practice, customs authorities detain imports at port warehouses until such a dispute is resolved.

¶14. There also are other, less obvious benefits to selecting an appropriate local agent. U.S. companies with experience in the UAE know that the "right" local agent has access to key UAEG decision makers, and exploits his family and political connections to influence outcomes of major public and private sector contracts. The titular head of the main families -- the Al-Otaibas, Al-Futtaims, Al-Ghurairs, to name a few -- also usually holds a high-ranking political position within the local government. Shaykh Mohammed bin Butti Al-Hamed, for example, is the Mayor of Abu Dhabi and also sits on the powerful Abu Dhabi Executive Council -- a governmental body that approves the federal budget and wields tremendous influence over major (multi-billion dollar) government contracts in Abu Dhabi. Shaykh Mohammed bin Butti also is the Chairman of Al-Hamed Group of Companies (a local agent) and Al-Ahlia General Trading Company (a local sponsor).

¶15. The fact that many local agents/sponsors also hold local government positions seems to be a conflict of interests by Western standards. In the UAE, however, the agency/sponsorship system is a natural extension of a political system based on tribal affiliation. UAEG officials make political decisions that benefit their tribe or family economically. Although U.S. companies complain that the tendering of government contracts can be far from transparent, other American firms have made significant inroads in the UAE by hiring prominent local agents who help the principal win multi-million dollar contracts.

¶16. U.S. companies sometimes can circumvent sponsorship requirements in the UAE, although this practice is not/not common and applies primarily to foreign companies dealing with UAE governmental entities. Foreign companies sometimes are the only suppliers of specialized goods or services that are not widely available. As per ref, foreign defense contractors must negotiate directly with the UAE Offsets Group, and international oil companies work directly with the state-run oil company. Some U.S. companies, such as Boeing, maintain an office in one of the UAE's free zones to avoid a local sponsor, but may be required to have a local sponsor to bid on a particular contract. In the past, Boeing has negotiated directly with quasi-governmental Emirates Airlines for the sale of aircraft. U.S. companies that enter into UAE governmental contracts without a sponsor often have no redress if the government entity does not fulfill or later changes the terms of the contract.

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